IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Stefanik	**Art Unit:** 2424
Application No.: 09/751,288	**Examiner:** Shang, Annan Q.
Filed: December 29, 2000	**Docket:** 00059
Title: "Remote Control Device with Event Notifier"	

37 C.F.R. § 1.8 CERTIFICATE OF TRANSMISSION

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Scott P. Zimmerman
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July 24, 2009
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APPELLANT'S BRIEF IN SUPPORT OF APPEAL

Mail Stop: Appeal Brief — Patents
Commissioner for Patents

The Assignee/Appellant hereby submits a Brief in Support of Appeal for the above-identified application. The 37 C.F.R. § 41.20 (b) (2) large entity fee was electronically paid at submission.

A Notice of Appeal was filed June 1, 2009.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or _scott@scottzimmerman.com_.

Respectfully submitted,

Scott P. Zimmerman
Reg. No. 41,390
Attorney for Appellant

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REAL PARTY IN INTEREST

The real party in interest is AT&T Intellectual Property I LP, as the Assignee of U.S. Patent Application 09/751,288, as evidenced by an assignment recorded at reel/frame 011981/0540.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences pertaining to the above-identified application.

STATUS OF CLAIMS

Claims 9-15 and 20-28 are pending in this application. Claims 1-8 and 16-19 were previously canceled.

Claims 23, 26, and 28 are independent claims.

Claims 9-15 and 20-28 were finally rejected under 35 U.S.C. § 103 (a) as being obvious over U.S. Patent 6,104,337 to Allport in view of U.S. Patent 6,346,891 to Feinlab, *et al.*

The Appellant appeals the final rejection of claims 9-15 and 20-28.

STATUS OF AMENDMENTS

The claims hereby Appealed are based on an Amendment that was filed on November 13, 2008. A final Office action was then mailed March 4, 2009. A Notice of Appeal was filed June 1, 2009.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter generally relates to a hand-held remote control device for consumer electronics devices. Exemplary embodiments, however, describe a remote control device that controls multiple consumer electronics devices by orientation. That is, different orientations of the remote control device correspond to different electronic devices. A motion detector detects the "tilting" of the remote control device. By changing the tilting of the remote control device, a user can change what consumer electronics device is remotely controlled. *See* the corresponding U.S. Patent Application Publication 2002/0085128 to Stefanik at least at paragraphs [0027] – [0028].

A) **Independent Claim 23**

In accordance with an exemplary embodiment, independent claim 23 recites a remote control device, comprising:

a processor;

a remote control receiver in communication with the processor, the remote control receiver receiving a message from a consumer electronics device, the message indicating a scheduled event has occurred that was tracked using an electronic program guide;

an input device in communication with the processor;

a data storage area in communication with the processor;

an output device in communication with the processor, and

a motion detector in communication with the processor, the motion detector detecting different orientations of the remote control device and providing feedback to the processor, the processor changing to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices,

wherein after the processor receives said message, the processor retrieves instructions from the data storage area, interprets said message based upon said retrieved instructions and controls said output device to produce a customized alert associated with said scheduled event.

Textual support for claim 23 is also provided. The processor is illustrated at least in FIG. 3 as reference numeral "64." The remote control receiver that receives the message indicating the scheduled event is illustrated in FIG. 3 and discussed at least at paragraphs [0012] and [0032]. The an input device, the a data storage area, and the an output device are illustrated in FIG. 5 and discussed at least at paragraphs [0020] and [0023] - [0025]. The motion detector that detects different orientations to control different electronic devices is illustrated in FIG. 2 and discussed at least at paragraphs [0026] - [0028]. The customized alert is discussed at least at paragraph [0033].

B)   **Independent Claim 26**

In accordance with another exemplary embodiment, independent claim 26 recites a system, comprising:

a remote control device communicating with an electronic device, the electronic device comprising:

a receiver for receiving signals from the remote control device,

an electronic program guide, and

a transmitter in communication with the electronic program guide, the transmitter transmitting a message to the remote control device, the message indicating an occurrence of a scheduled event that was tracked using the electronic program guide; and

the remote control device comprising:

a processor,

a remote control receiver in communication with the processor, the remote control receiver receiving the message from the electronic device that indicates the scheduled event has occurred according to the electronic program guide,

an input device in communication with the processor,

a light source in communication with the processor,

a storage area in communication with the processor,

a motion detector in communication with the processor, wherein, in response to motion detected by said motion detector, the said processor retrieves instructions from said storage area and sends a signal to the light source to illuminate a portion of said input device, and when the motion detector detects different orientations of the remote control, the processor changes to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices, and

an output device in communication with the processor, wherein the output device is for providing an alert to a user when a scheduled event occurs.

Textual support for claim 26 is provided. The remote control device that communicates with the electronic device is illustrated in FIGS. 3 and 4. The receiver is illustrated in FIG. 3 and discussed at least at paragraphs [0012] and [0032]. The electronic program guide is illustrated in FIGS. 3 and 4 and discussed at least at paragraphs [0031] and [0034]. The processor is

illustrated at least in FIG. 3 as reference numeral "64." The remote control receiver that receives the message indicating the scheduled event is illustrated in FIG. 3 and discussed at least at paragraphs [0012] and [0032]. The an input device, the a data storage area, and the an output device are illustrated in FIG. 5 and discussed at least at paragraphs [0020] and [0023] - [0025]. The motion detector that detects different orientations to control different electronic devices is illustrated in FIG. 2 and discussed at least at paragraphs [0026] - [0028]. The alert is discussed at least at paragraph [0033].

C)   Independent Claim 28

In accordance with another exemplary embodiment, independent claim 28 recites a system, comprising:

> a remote control device, the remote control device comprising:
> a processor;
> a remote control receiver in communication with the processor;
> an input device in communication with the processor;
> a light source in communication with the processor;
> a storage area in communication with the processor;
> a motion detector in communication with the processor, wherein, in response to motion detected by said motion detector, the processor retrieves instructions from said storage area and sends a signal to the light source to illuminate a portion of said input device, and when the motion detector detects different orientations of the remote control, the processor changes to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices;
> an output device in communication with the processor, wherein the output device is for providing a customizable alert to a user when a scheduled event occurs; and
> an electronic device, the electronic device including:
> a receiver for receiving signals from the remote control device,

an electronic program guide, and

a transmitter in communication with the electronic program guide, the transmitter transmitting data from the electronic program guide to the remote control device, the data indicating an occurrence of the scheduled event,

wherein said processor detects activation of said input device and, responsive thereto, said processor turns off said customized alert.

The processor is illustrated at least in FIG. 3 as reference numeral "64." The remote control receiver that receives the message indicating the scheduled event is illustrated in FIG. 3 and discussed at least at paragraphs [0012] and [0032]. The an input device, the a data storage area, and the an output device are illustrated in FIG. 5 and discussed at least at paragraphs [0020] and [0023] - [0025]. The motion detector that detects different orientations to control different electronic devices is illustrated in FIG. 2 and discussed at least at paragraphs [0026] - [0028]. The alert is discussed at least at paragraph [0033].

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Appellant appeals the final rejection of claims 9-15 and 20-28 under 35 U.S.C. § 103 (a) as being obvious over U.S. Patent 6,104,337 to Allport in view of U.S. Patent 6,346,891 to Feinlab, *et al.*

ARGUMENT

1.   *Allport* & *Feinlab* Do Not Teach All Claimed Features

Claims 9-15 and 26-28 are not obvious over the combined teaching of *Allport* with *Feinlab*. The proposed combination of *Allport* with *Feinlab* fails to teach or suggest all the claimed features of the independent claims. Independent claim 23, for example, recites "*a motion detector in communication with the processor, the motion detector detecting different*

orientations of the remote control device and providing feedback to the processor, the processor *changing to a mode of operation of the remote control device that corresponds to a particular orientation*, such that *different orientations* of the remote control device *control different electronic devices*" (emphasis added). Support for these features may be found at least at paragraphs [0027] – [0028] of the corresponding U.S. Patent Application Publication 2002/0085128 to Stefanik. Independent claims 26 and 28 recite similar features.

These features are not obvious over the combined teaching of *Allport* with *Feinlab*. Examiner Shang concedes, in the Final Office Action mailed March 4, 2009, that *Allport* is silent to the details of the claimed motion detector.

So Examiner Shang proposes to combine *Allport* with *Feinlab*. Examiner Shang even cites to several portions of *Feinlab's* disclosure. Examiner Shang, however, is mistaken. Examiner Shang has, very respectfully, misinterpreted *Feinlab*. When *Feinlab* is properly interpreted, the combined teaching of *Allport* with *Feinlab* fails to teach or suggest a remote control that detects "*different orientations*" and changes "*to a mode of operation ... that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices*" (emphasis added). Because *Allport* with *Feinlab* does not teach or suggest at least these features, one or ordinary skill in the art would not think that the pending claims are obvious.

Feinlab teaches a remote control equipped with a motion sensor. *See* U.S. Patent 6,346,891 to Feinlab, *et al.* at column 2, lines 1-5 and at column 3, lines 13-15. *Feinlab's* motion sensor "detects movement" of the remote control. *See* at column 3, lines 14-20. When movement is detected, *Feinlab's* motion sensor sends a "WAKE" command to the controlled device. *See id.* at column 3, lines 25-28. The "WAKE" command causes the controlled device to begin a start-up phase of operation. *See id.* at column 3,lines 29-30. The start-up phase may be powering up, spinning a drive, starting an operating system, or invoking a start-up menu. *See id.* at column 3, lines 60-65. *Feinlab* repeats this teaching at column 4, lines 29-50.

The Board should now realize at least one error in the final Office Action. The proposed combination of *Allport* with *Feinlab* teaches a remote control that only detects movement and sends a "WAKE" command to a <u>single</u>, remotely controlled device. The independent claims, in contradistinction, detect "*different orientations*" and changes are made to the remote's "*mode of operation ... that corresponds to a <u>particular orientation</u>, such that <u>different orientations</u> of the remote control device <u>control different electronic devices</u>*" (emphasis added). The proposed combination of *Allport* with *Feinlab*, quite simply, makes no such teaching. Examiner Shang has, very respectfully, misinterpreted *Feinlab*.

Claims 9-15 and 26-28, then, are not obvious over the combined teaching of *Allport* with *Feinlab*. Independent claims 23, 26, and 28 recite many features that are not taught or suggested by *Allport* with *Feinlab*. Their respective dependent claims incorporate these same features and recite additional features. Claims 9-15 and 26-28, then, cannot be obvious over *Allport* with *Feinlab*.

The Board is thus respectfully requested to REVERSE the final rejection of the pending claims. The Board is also respectfully requested to either allow these claims or to reopen prosecution.

CONCLUSION

In view of the foregoing reasons, the Appellant respectfully requests removal of the § 103 (a) rejections of the pending claims over the proposed combination of *Allport* with *Feinlab*.

AUTHORIZATION FOR PAYMENT OF FEES

If there are any other fees due in connection with the filing of this brief in support of appeal, the Office is hereby authorized to charge the fees to the same credit card identified at submission. If any additional fees are required, such as a fee for an extension of time under 37 C.F.R. § 1.136, such extension of time is requested and the fee should also be charged to the same credit card.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or *scott@scottzimmerman.com*.

Respectfully submitted,

Scott P. Zimmerman
Attorney for the Assignee/Appellant
Reg. No. 41,390

CLAIMS APPENDIX

U.S. Patent Application No. 09/751,288 Pending Claims

1-8.   (Canceled)

9.   The system of claim 26, wherein the data include television program starting times.

10.   The system of claim 26, further comprising a telephonic device in communication with the transmitter.

11.   The system of claim 26, wherein the output device includes at least one of a speaker and a light source.

12.   The system of claim 26, wherein the remote control device further comprises a smart card reader/writer in communication the processor.

13.   The system of claim 12, further comprising a smart card.

14.   The system of claim 13, wherein the smart card is configured to include information concerning at least one of a user profile, a user history, a favorite show, a favorite channel, a favorite theme, a channel order, a parental control, a pay-per view purchase, and a pay-per-view spending limit.

15.   The system of claim 13, wherein the smart card is configured to include information concerning at least one of a user Internet profile, an e-mail account, an Internet browser bookmark, an account name, an address list, a security feature, and a display format for Internet browsing on a television monitor.

16-19. (Canceled)

20.   The remote control device of claim 23, wherein the customized alert includes a plurality of noises, wherein the plurality of noises vary in pitch.

21.   The remote control device of claim 23, wherein the data include television program starting times.

22.   The remote control device of claim 23, wherein the remote control device further comprises a smart card reader/writer in communication the processor.

23.   A remote control device, comprising:

        a processor;

        a remote control receiver in communication with the processor, the remote control receiver receiving a message from a consumer electronics device, the message indicating a scheduled event has occurred that was tracked using an electronic program guide;

        an input device in communication with the processor;

        a data storage area in communication with the processor;

        an output device in communication with the processor, and

        a motion detector in communication with the processor, the motion detector detecting different orientations of the remote control device and providing feedback to the processor, the processor changing to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices,

        wherein after the processor receives said message, the processor retrieves instructions from the data storage area, interprets said message based upon said retrieved instructions and controls said output device to produce a customized alert associated with said scheduled event.

24.   The remote control device of claim 23, wherein said instructions enable said processor, in conjunction with said output device, to generate one of a plurality of different alerts.

25.   The remote control device of claim 23, wherein said processor detects activation of said input device and, responsive thereto, said processor turns off said customized alert.

26.   A system, comprising:

a remote control device communicating with an electronic device, the electronic device comprising:

a receiver for receiving signals from the remote control device,

an electronic program guide, and

a transmitter in communication with the electronic program guide, the transmitter transmitting a message to the remote control device, the message indicating an occurrence of a scheduled event that was tracked using the electronic program guide; and

the remote control device comprising:

a processor,

a remote control receiver in communication with the processor, the remote control receiver receiving the message from the electronic device that indicates the scheduled event has occurred according to the electronic program guide,

an input device in communication with the processor,

a light source in communication with the processor,

a storage area in communication with the processor,

a motion detector in communication with the processor, wherein, in response to motion detected by said motion detector, the processor retrieves instructions from said storage area and sends a signal to the light source to illuminate a portion of said input device, and when the motion detector detects different orientations of the remote control, the processor changes to a mode

of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices, and

an output device in communication with the processor, wherein the output device is for providing an alert to a user when a scheduled event occurs.

27.   The system of claim 26, wherein said storage area contains instructions for handling said data indicative of said scheduled event and further wherein said processor operates, upon receipt of said data from said remote control receiver, to:

(a)   retrieve said instructions from said storage area;

(b)   interpret said data using said instructions; and

(c)   use said interpreted data to generate, as said alert, one of a plurality of different alerts associated with said scheduled event.

28.   A system, comprising:

a remote control device, the remote control device comprising:

a processor;

a remote control receiver in communication with the processor;

an input device in communication with the processor;

a light source in communication with the processor;

a storage area in communication with the processor;

a motion detector in communication with the processor, wherein, in response to motion detected by said motion detector, the processor retrieves instructions from said storage area and sends a signal to the light source to illuminate a portion of said input device, and when the motion detector detects different orientations of the remote control, the processor changes to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices;

an output device in communication with the processor, wherein the output device is for providing a customizable alert to a user when a scheduled event occurs; and

an electronic device, the electronic device including:

a receiver for receiving signals from the remote control device,

an electronic program guide, and

a transmitter in communication with the electronic program guide, the transmitter transmitting data from the electronic program guide to the remote control device, the data indicating an occurrence of the scheduled event,

wherein said processor detects activation of said input device and, responsive thereto, said processor turns off said customized alert.

EVIDENCE APPENDIX

There are no submissions pursuant to 37 CFR § 41.37 (c) (ix) for U.S. Patent Application No. 09/751,288.

RELATED PROCEEDINGS APPENDIX

There are no submissions pursuant to 37 CFR § 41.37 (c) (x) for U.S. Patent Application No. 09/751,288.